STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN Plaintiff-Appellant, v CHRISTOPHER ALLAN OROS Defendant-Appellee.	)	SUPREME COURT NO. _____ COURT OF APPEALS NO. 329046 CIRCUIT COURT FILE NO. 2014-1711 FC

PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

NOTICE OF FILING

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STATEMENT OF APPELLATE JURISDICTION

Plaintiff-Appellant is seeking relief from a *published* opinion issued by the Michigan Court of Appeals on June 8, 2017, reducing Defendant's first-degree premeditated murder conviction to second-degree murder and remanding for sentencing for that offense. Plaintiff-Appellant's application is timely filed, see MCR 7.305(C)(2)(a), and this Court has the discretion to exercise jurisdiction over this matter pursuant to MCR 7.303(B)(1).

STATEMENT OF QUESTION PRESENTED

DID THE COURT OF APPEALS CLEARLY ERR WHEN FINDING THAT THE EVIDENCE PRESENTED AT TRIAL—WHEN CONSIDERED IN A LIGHT MOST FAVORABLE TO THE PROSECUTION—WAS INSUFFICIENT FOR ANY RATIONAL JURY TO CONCLUDE THAT DEFENDANT ACTED WITH PREMEDITATION AND DELIBERATION WHEN KILLING THE VICTIM?

Plaintiff-Appellant Answers: "YES"

Defendant-Appellee Would Contend: "NO"

STATEMENT OF FACTS

Defendant was charged with first-degree premeditated murder, first-degree felony murder, first-degree arson, second-degree home invasion, and escape while awaiting trial, for the brutal death and subsequent burning of the victim, a heavy-set, mentally and physically challenged woman who lived alone (JT I, 211, 214; JT III, 63; JT IV, 5-7, 16).[1] On November 22, 2014 (the day in question), Defendant went from door-to-door within the Clayborne apartment complex seeking to obtain money from various residents by using a guise that his girlfriend left with his cell phone and bankcard and he needed gas to get to work. Defendant would first ask to use their phone to call his girlfriend, he would then call his own cell phone and pretend to leave a message for his girlfriend, and then either ask for money outright from the apartment owner or solicit it indirectly (JT I, 223-224, 227-228; JT II, 26, 32-33, 35, 51, 58, 61, 77, 82; JT III, 54-55). One resident testified that Defendant came to her door around noon, another resident testified that Defendant came to his apartment sometime between 1:00 p.m. and 1:30 p.m., and a third resident testified that he let Defendant in around 3:00 p.m. (JT I, 226; JT II, 34, 74). Cellular records revealed that Defendant made a call from the victim's phone to his phone at 4:32 p.m. that afternoon (JT III, 195).

[1] For ease of reference, the pertinent transcripts in this case will be referred to as follows:

JT I	7/21/2015	Jury Trial (day one)
JT II	7/22/2015	Jury Trial (day two)
JT III	7/23/2015	Jury Trial (day three)
JT IV	7/28/2015	Jury Trial (day four)
JT V	7/29/2015	Jury Trial (day five)
JT VI	7/30/2015	Jury Trial (day six)
ST	8/24/2015	Sentencing

A couple residents refused to let Defendant in, including a female who testified that she did not trust him—that "something just seemed off" (JT II, 26-27). She described Defendant as talking really fast and "rambling" and added that he appeared "frazzled" (JT II, 27, 28-29). Another resident testified that he did not let Defendant inside his apartment or use his phone because he did not believe him (JT II, 48, 51). Other residents testified that after letting Defendant inside, they noticed that he attempted to make his way further into their apartment and noticed him looking around or "casing" their place—even commenting to one couple that they appeared to have a lot of money and expensive items (JT I, 230; JT II, 34, 59, 80-81, 123, 126).

One female resident testified that she let Defendant inside, thinking he was a neighbor, and went upstairs to retrieve her phone (JT I, 223- 224). When she came back down, she noticed that her purse was sitting nearby in plain view so she purposely stood by it while Defendant used the phone (JT I, 224). She offered Defendant some quarters she had for laundry, but he said that was not "enough" (JT I, 227-228). She said he ended up lingering in her apartment for almost forty-five minutes and had almost made his way into the living room (JT I, 230). At one point he asked if anyone else was in the apartment (JT I, 231). She ended up giving Defendant $50.00 and told him that that was all she had (JT I, 228). He finally left after she questioned him about being late for work (JT I, 230). She added that she had a pit bull in the apartment with her, that the dog stayed between her and the Defendant, and that Defendant kept squatting down and trying to pet him—as if to get the dog to warm up to him (JT I, 230-231, 234).

Another resident testified that after he let Defendant inside to use his phone, Defendant was "insistent" about getting money (JT II, 33, 35). He said Defendant appeared "desperate" to get money and continued to "forcibly" ask for it (JT II, 39-40). He thought Defendant was "high on heroin," stating that Defendant was "shaking like he was nervous," his "eyes were wandering

everywhere in the apartment," he was "tremoring," and his speech was "jittery" (JT II, 33-34, 37-38). The resident actually believed that Defendant was so desperate for money that he would have used force against him had he not told Defendant that he was on probation and that two other people were in the apartment with him (JT II, 31, 36, 40). Several other residents also commented about Defendant's appearance—stating that he was "sweating profusely with a small tremor in his body," that he "looked like he was in a nervous fit," and that he was "shaky and sweaty" (JT II, 59, 63, 83, 121).

At 8:27 p.m. a call came in reporting a fire in the victim's apartment (JT II, 131, 138). The victim's body was discovered on a bed in the rear bedroom, covered in clothes, with some type of wicker furniture and a mattress on top of her (JT III, 134, 146, 192-193). The medical examiner testified that the victim sustained *at least* 29 stab wounds, including approximately 10 stab wounds to the right side of her neck, approximately 7 near her thoracic-midline, 3 in her upper-chest area, 1 at the base of her skull, and 1 near the base of her neck (JT V, 13, 20, 30-39, 44-45). The deepest wound(s) measured five inches and, according to the medical examiner, many of the wounds (given their location and depth) would have required some effort to remove the knife from the victim's body (JT V, 47, 53). She was also of the opinion (based on the presence of hemorrhaging) that "at least 19" of the wounds were sustained while the victim was still alive (JT V, 54). The victim was already dead when the fire was started (JT V, 52).

When examining the scene, investigators discovered a large knife with a bent blade in the kitchen sink, pieces of red ceramic (resembling the coffee mugs sitting on a nearby shelf) embedded in the floor, and two separate saturated blood stains in the living room area of the apartment (one just inside the living room near the front door and another in the corner of the living room) (JT II, 163, 169, 171, 175, 180, 182, 187-188; JT III, 133, 135; JT IV, 12). The blood and

hair root affixed to one of the ceramic pieces belonged to the victim (JT III, 178-179). There was also a turned-over desk chair near the front door (JT IV, 12).

Defendant admitted to the police—after first telling them a completely different story and then claiming that he acted in self-defense—that the victim was face-down and he was on her back when he stabbed her more than twenty times in various parts of her body (JT III, 58, 60, 62; JT IV, 26-27). He also confessed that he punched her in the face (wounds were observed on the back of Defendant's left hand) and stabbed her in the stomach area (JT III, 62, 71, 73). The victim eventually rolled over onto her back and quit breathing (JT III, 63). Defendant recalled staring at her face for three minutes (JT III, 63). Defendant left the victim's apartment around 4:48 p.m., when he sent a text to a man named "Gary Gulliver," indicating that he was on his way (JT III, 195). He sent a text to his girlfriend, Robin Wiley, two minutes later, claiming that he had been attacked (JT III, 196). He sent a follow-up text that read, "P.S. I hate crazy people" (JT III, 197).

Defendant went back to the scene approximately two and one-half hours later "to clean it up," not wanting to leave any DNA behind (JT III, 65-66, 110-111; JT IV, 49, 52-53). He dragged the victim from the living room to the bedroom, where he wrapped her in blankets and put her on her bed (JT III, 63). Defendant put a mattress, some wicker furniture, and some papers on the victim and lit it on fire (JT III, 63-64). He also admitted spraying bleach to cover up his DNA, putting the knife in dishwater in the sink, and physically removing several items from the apartment and later disposing of them—including the victim's purse (JT III, 64-66).

The jury found Defendant guilty on all counts (JT VI, 8-9). Defendant thereafter appealed to the Court of Appeals, arguing among other things that insufficient evidence was presented to establish that he acted with premeditation and deliberation. The Court of Appeals agreed and reduced Defendant's first-degree premeditated murder conviction to second-degree murder and

remanded for sentencing for that offense. See *People v Christopher Oros*, __ Mich App __; __ NW2d __ (2017), slip op, 1-5 (Attachment A).[2] Plaintiff now seeks relief from this Court.

[2] The Court of Appeals also vacated Defendant's felony murder conviction and remanded for a new trial on that charge, rejected his other claims, and did not address his sentencing issue, determining it was moot.

ARGUMENT

THE COURT OF APPEALS CLEARLY ERRED WHEN FINDING THAT THE EVIDENCE PRESENTED AT TRIAL—WHEN CONSIDERED IN A LIGHT MOST FAVORABLE TO THE PROSECUTION—WAS INSUFFICIENT FOR ANY RATIONAL JURY TO CONCLUDE THAT DEFENDANT ACTED WITH PREMEDITATION AND DELIBERATION WHEN KILLING THE VICTIM.

PRESERVATION OF ISSUE

Nothing is required to preserve a challenge to the sufficiency of the evidence. *People v Patterson*, 428 Mich 502, 514-515; 410 NW2d 733 (1987).

STANDARD OF REVIEW

A challenge to the sufficiency of the evidence presents a question of law that is reviewed de novo on appeal. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). When considering such a claim, the appellate court is to review the evidence in a light most favorable to the prosecution to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

> The standard of review is deferential; a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. [*People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).]

Moreover, when reviewing a sufficiency of the evidence claim, "[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and

to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

SUFFICIENT EVIDENCE OF PREMEDITATION AND DELIBERATION; PROSECUTION DID NOT RELY SOLELY ON NUMBER OF STAB WOUNDS; COURT OF APPEALS CLEARLY ERRED

Defendant argued on appeal that insufficient evidence of intent was presented to sustain his conviction of first-degree murder, claiming that "[t]he only evidence introduced by the prosecution in an attempt to show premeditation and deliberation was the fact that Ms. McMillan suffered multiple stab wounds." The Court of Appeals agreed—ignoring a host of other relevant evidence presented at trial, as well as any reasonable inferences that may be drawn from that evidence—and overturned the jury's verdict.

"A conviction of first-degree premeditated murder requires evidence that 'the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate.'" *People v Jackson*, 292 Mich App 583, 587-588; 808 NW2d 541 (2011), quoting in part *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). To "premeditate" is to "think about beforehand" and to "deliberate" is to "measure and evaluate the major facets of a choice or problem." *People v Bass*, 317 Mich App 241, 265-266; 893 NW2d 140 (2016), quoting *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). "Some time span between the initial homicidal intent and the ultimate killing is necessary to establish premeditation and deliberation;" however, "the time required need only be long enough 'to allow the defendant to take a second look.'" *People v Unger*, 278 Mich App 210, 229; 749 NW2d 272 (2008) (internal citation omitted); see also, *People v Hoffmeister*, 394 Mich 155, 161; 229 NW2d 305 (1975); *People v Vail*, 393 Mich 460, 469; 227 NW2d 535 (1975). Premeditation need not necessarily be a "thought process undisturbed by hot blood," as the implication that first-degree murder includes only "calm, cool, deliberate

assassination" has been rejected—for even a savage attack can be premeditated. *People v Moss*, 70 Mich App 18, 45; 245 NW2d 389 (1976), aff'd sub nom, *People v Tilley*, 405 Mich 38; 273 NW2d 471 (1979).

Premeditation may be established through evidence of the defendant's actions before the killing, the relationship (if any) between the defendant and the victim, the circumstances of the killing itself—including the type of weapon used and the location of the wounds inflicted—and the defendant's conduct after the homicide. *Bass*, *supra*, 317 Mich App at 265-266; *Unger*, *supra*, at 229. The fact that a defendant engaged in a slow means of death—during which he had time to rethink his actions—could also be used as evidence of premeditation, see *People v Gonzalez*, 468 Mich 636, 641-642; 664 NW2d 159 (2003), as could "[t]he nature and number of a victim's wounds"—as the time required to inflict multiple wounds affords an assailant sufficient time to take a "second look," *Unger*, *supra*, at 231. Again, as with any element, "[c]ircumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of premeditation and deliberation." *Unger*, *supra*, at 229.

Here, the Court of Appeals first found that there was no relationship between the Defendant and the victim, that Defendant's actions before the murder "yield[ed] no support for a finding of premeditation" (as he never acted violently toward any of the other apartment residents), and that his conduct after the killing (due to the delay) did not evidence a preconceived plan (see Attachment A, slip op, 4). The lower court then considered the circumstances surrounding the killing itself. And relying solely on Plaintiff's argument that premeditation could be inferred from the number of stab wounds inflicted—i.e., giving Defendant adequate time to reconsider his actions and take a "second look"—the Court of Appeals held that that evidence was insufficient

because the "argument that premeditative intent can be formed between successive stab blows has already been rejected by our Supreme Court" in *Hoffmeister*, *supra*.

The Court of Appeals cited language in *Hoffmeister*, wherein this Court held that "[t]he brutality of a killing does not itself justify an inference of premeditation and deliberation" and "[t]he mere fact that the killing was attended by much violence or that a great many wounds were inflicted is not relevant (on the issue of premeditation and deliberation), as such a killing is just as likely (or perhaps more likely) to have been on impulse." *Hoffmeister*, *supra*, 394 Mich at 159. The lower court also cited this Court holding that "[t]here is no basis on this record for an inference that between the successive, potentially lethal blows [i.e., multiple stab wounds] the killer calmly, in a cool state of mind…subjected the nature of his response to a second look." *Id*. The court went on to grapple with the holdings in two more recent decisions issued by this Court[3]—both cited by Plaintiff on appeal—and concluded that they could be "harmonized" with *Hoffmeister* because, although both held that evidence of manual strangulation can be used as evidence that a defendant had an opportunity to take a "second look," they did not conclude that such evidence was sufficient on its own (see Attachment A, slip op, 5).

The Court of Appeals' analysis is flawed for several reasons. First, the court erred in assuming or finding that the only evidence Plaintiff admitted (or relied on) to establish premeditation was the number of stab wounds inflicted. To the contrary, that evidence was only a portion of the evidence from which premeditation and deliberation could be reasonably inferred. Second, and related to the first, the lower court erred in finding that Defendant's pre-offense conduct yielded no support for a finding of premeditation. Simply because Defendant did not exhibit any violence toward the other apartment residents does not mean that he had not considered

[3] *People v Johnson*, 460 Mich 720; 597 NW2d (1999) and *Gonzalez*, *supra*.

doing so if the opportunity presented itself. And third, the court erred in interpreting *Hoffmeister* to mean that premeditation and deliberation can *never* be formed between multiple, successive lethal blows. The *Hoffmeister* Court held only that "*the mere fact*" that "a great many wounds were inflicted" does not, "standing alone," support an inference of premeditation and that there was no basis *on that record* to infer that the killer considered his behavior between the successive, lethal blows. *Hoffmeister*, *supra*, at 159; emphasis added. Plaintiff argues that this case is different. Again, not only is there evidence in addition to the number of wounds inflicted, this record supports a reasonable inference that Defendant had the time to consider his actions between the lethal blows—as they were not all inflicted in rapid succession or without pause.

The jury could reasonably presume from the evidence presented that Defendant was desperate for money, presumably to purchase drugs. He appeared to be coming down from a drug high, as some described him as "jittery" and "tremoring" (JT II, 34, 37, 59). He had been going door-to-door for more than four hours before he reached the victim's apartment (JT I, 226; JT II, 34, 74). He was insistent of some residents to get money and tried to make his way into their apartments (JT I, 227-228, 230; JT II, 34, 59, 80-81, 123, 126). The Court of Appeals found that Defendant was not violent toward any of them, but one resident testified that based on Defendant's behavior, he believed that Defendant would have resorted to force if the resident had been home alone (JT II, 40). The victim in this case lived alone and struggled physically and mentally (JT I, 211, 214; JT III, 63; JT IV, 5-7, 16). She was likely the first vulnerable person Defendant encountered—and the opportunity presented itself once he was inside her apartment. One female shut the door and refused him entry and another female had a pit bull that remained between her and Defendant (JT II, 26-27; JT I, 230-231, 234). Even so, Defendant lingered in that woman's

apartment and inquired whether anyone else was present (JT I, 231). The evidence also shows that Defendant commented on one of the resident's expensive possessions (JT II, 123).

Although it is not clear what took place in the victim's apartment before she was assaulted, evidence was presented that Defendant was allowed entry, that he made at least one call from the victim's phone, and that she gave him some water (JT III, 56-57). At some point in time, Defendant forcibly struck the victim on the head with a ceramic mug (breaking the mug into many pieces—one of which contained the victim's blood and her hair root), punched her in the face (hard enough to leave abrasions to the back of his hand), and retrieved a large knife from the kitchen (where he ultimately returned it before leaving) (JT II, 175, 180, 188; JT III, 62, 66, 71, 73). Defendant claimed that the victim had the knife and was threatening him with it and that he was able to get it only after a struggle (JT III, 60-61). Either way, whether he took the time to get the knife from the kitchen or gained control of it after a struggle with the victim, both could be evidence of premeditation and deliberation. See *Unger*, *supra*, at 231. Based on Defendant's own statements to the police, he then stabbed the victim in the "stomach area," and eventually got on her back—which certainly would have allowed for a pause or an "intervening period for premeditative reflection" (see *Hoffmeister*, *supra*, at 159 fn 4)—and stabbed her multiple times and in various locations, including in her neck (JT III, 62) He even commented to the police that he starred at her face for three minutes to make certain that she was dead (JT III, 63).

The medical examiner testified that there were at least 29 stab wounds that she was able to identify—others she could not count due to the condition of the victim's body (JT V, 13-14). The wounds were primarily in the neck, chest, and abdomen (JT V, 13, 14, 20, 30-38, 39). She did not testified concerning any random outlying wounds. Instead, all appeared to be in those three vital locations. Two stab wounds were particularly peculiar in that they evidenced calculated and

deliberate action on Defendant's part. One was a stab wound to the back of the victim's neck at the base of her skull, and another was a 4-inch-deep wound just under her chin that went up into her throat and oral cavity (JT V, 44-45). Some of the wounds were three or four inches deep and one was as deep as five inches, striking ligaments, bone, and various organs (JT V, 30-33, 40-41). The medical examiner testified that many would have required some effort to not only insert the knife, but to withdraw it from the victim's body (JT V, 46-47). The blade of the knife was bent two inches (JT II, 188).

Finally, the record shows two separate saturated blood stains in the living room of the victim's apartment, revealing some movement of the victim's body and excessive bleeding in both locations (JT III, 133, 135)—whether Defendant moved the victim's body himself or the victim attempted to flee.

Considering this evidence *in a light most favorable to the prosecution*, the Court of Appeals clearly erred when vacating Defendant's first-degree premeditated murder conviction. Defendant certainly had time to consider his actions and take a "second look." *Unger*, *supra*, at 231.

RELIEF

WHEREFORE, the People of the State of Michigan, Plaintiff herein, respectfully request that this Honorable Court grant leave to appeal or, in lieu of granting leave, reinstate Defendant's first-degree premeditated murder conviction based on the arguments presented herein.

Respectfully submitted,

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